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U.S. House of Representatives
Committee on Transportation and Infrastructure

James L. Oberstar
Chairman

Washington, DC 20515

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December 15, 2008

James W. Coon II, Republican Chief of Staff

The Honorable Mary E. Peters
Secretary
U.S. Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

Dear Secretary Peters:

We write to express our serious concerns with the Federal Highway Administration's ("FHWA") notice of proposed rulemaking ("NPRM") entitled "Fair Market Value and Design-Build Amendments" published in the October 8, 2008 Federal Register.

In its current form, the proposed rule would require State departments of transportation ("DOT") and other public authorities to negotiate for and obtain fair market value as part of any concession agreement involving a facility utilizing right-of-way, design or construction funded in part by Federal-aid highway funds. We have heard from numerous State DOTs and local toll authorities raising serious concerns with the proposed rule, which would force all toll projects receiving any federal assistance to go through a market valuation process.

Under this proposed rule, a State planning to have a public toll authority operate a federally funded highway would be required to charge the authority fair market value to lease it. If implemented, this would unnecessarily limit the procurement options available to the States, and inappropriately force State DOTs and local toll agencies to use a private sector concession model that is focused on investor rate of return.

The proposed rule would also significantly change current federal regulations that allow the transfer of highways between governmental entities to be done without charge. The current regulations recognize that charging higher tolls to support a higher upfront fee may not be in the greater public interest.

We recognize that the public's interest may be served when a State receives a large concession payment for a facility and uses the proceeds for additional surface transportation improvements. However, the public interest may also be served when a State contracts with another public entity for the operation of a Federal-aid transportation facility, regardless of whether fair

market value or best value is received. Under this proposed rule, States would lose the flexibility to determine how best to address their surface transportation needs and protect the public interest.

We are also troubled by FHWA's determination that this action does not constitute a significant regulatory action. If implemented, this change would have major impact on multi-billion dollar concession projects and could have a significant adverse material affect on State and local governments. It is clear to us that this action requires a more thorough analysis and regulatory evaluation by the Office of Management and Budget, as per applicable executive orders. As such, we request the Department promptly provide us with detailed justification for FHWA's decision.

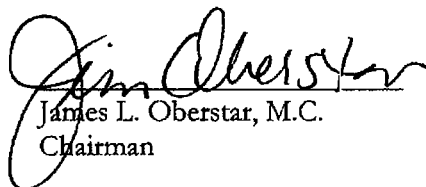
Madam Secretary, you have consistently called for developing a new method of financing the nation's surface transportation programs through the direct pricing of roadway facilities. Under such a road pricing system, tolls and user charges must be borne by the users of the facility and reflect only the cost of using the facility. Current law provides that the toll revenue generated be used for debt service, providing a reasonable return to the private investor in the facility when applicable, and for proper operation and maintenance of the facility. As currently drafted, the proposed rule would force the implementation of toll rates and user charges that bear no relation to the true financing, construction, operating and maintenance costs of the facility. Furthermore, the NPRM contains no protections that the revenues generated from the sale and operation of the facility be reinvested in the facility or in additional surface transportation improvements.

Private investment will play an important role in meeting the nation's surface transportation needs, and the Federal Government should create policies to foster this private sector involvement where appropriate. When utilizing private resources for transportation facilities, the priority must be on serving the greater public interest and enhancing transportation services, not on maximizing revenues to increase rates of return for the private investor or subsidizing other governmental functions.

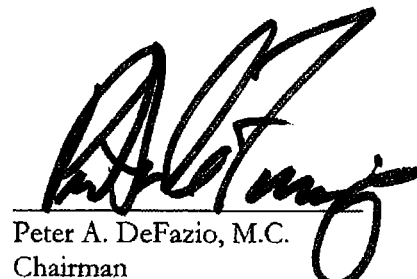
To this end, we share the concern that this proposed rule would mark a significant departure from existing Federal policy and should be considered during the upcoming authorization of the nation's surface transportation programs, not through a hastily written rule in the final days of this administration.

Thank you for your attention to our concerns.

Sincerely,



James L. Oberstar, M.C.
Chairman



Peter A. DeFazio, M.C.
Chairman
Subcommittee on Highways
and Transit